

Division of Law

Staffed by approximately 520 Deputy Attorneys General, the Division of Law is involved on a daily basis in many complex and important legal matters including, but not limited to, those relating to health care, the protection of children from abuse and neglect, preservation of the environment, and defending the public interest. The Division's workload is informed by the Attorney General's statutory duty as legal adviser to agencies of State government and defender of State laws, by the number of lawsuits brought against the State, and by the amount and nature of litigation pursued by various departments of State government. The Division's current caseload involves 37,500 pending legal matters, of which approximately 14,350 involve litigation (60 percent as defendant). Approximately 15,000 cases involve administrative matters, 6,300 involve non-litigation matters (e.g., investigations, informal and formal advice, etc.) and 1,750 involve appeals. To learn more visit www.nj.gov/oag/law



Keynote Achievements

- ❖ The Division recovered \$10.8 million in past environmental cleanup costs and more than \$1.2 million in natural resource damages in 2006. The Division also played a significant role in a series of multi-state efforts challenging the U.S. Environmental Protection Agency's (EPA) recent weakening of federal Clean Air Act Regulations, and engaged in litigation to challenge EPA's attempt to exempt power plants from stringent controls on mercury emissions.
- ❖ More than 1,050 children were cleared for adoption in 2006 because of the work of Division of Law DASG assigned to matters involving the state Division of Youth and Family Services (DYFS).
- ❖ Civil enforcement actions handled by the Division against insurance carriers, producers and public adjusters in 2006 resulted in 42 license revocations and suspensions, a total of \$3.6 million in fines imposed, and more than \$7 million in restitution assessed.
- ❖ Among the Division's 2006 litigation efforts on behalf of New Jersey consumers was the Ameriquest settlement, which ensured that New Jersey residents who had been subjected to predatory lending practices between 1995 and 2005 will receive a total of approximately \$10 million in restitution.
- ❖ The Division handled a number of civil matters relating to public safety in 2006 including Division of Fire Safety v. New York Susquehanna & Western Railway. The case involved the NYS&W storing containers of hazardous and self-igniting material in an unsafe manner. The railroad agreed to remove the material and to meet regularly with local and state officials to provide information on handling and emergency response protocols.

Significant Cases

Federal Clean Air Cases—

The Division is engaged in several high profile, multi-state efforts to address violations of the Clean Air Act by mid-western power plants. Current lawsuits and potential litigation involve more than 20 power plants located in the states of Indiana, Ohio, Pennsylvania, West Virginia and Virginia. The various plants are owned by American Electric Power, Cinergy, Allegheny Energy and Reliant Energy. Each of the plants have made modifications to their units resulting in excess emission of air pollutants. The central legal question is whether those modifications triggered provisions of the federal Clean Air Act that require new or "modified" power plants to install pollution control devices to limit their emissions. The sulfur dioxide, nitrogen oxides and particulate matter emitted by these plants get caught in the jet stream, form into nitrates and sulfates, and are deposited in New Jersey where they harm the public health and the environment.

Lewis v. Harris/Civil Union Law—

The Division of Law was involved in 2006 in proceedings related to a lawsuit filed several years ago by seven same-sex couples who sought to obtain New Jersey marriage licenses but were rejected. The couples alleged that the New Jersey Constitution's privacy and equal protection provisions require the state to afford committed, same-sex couples access to state-sanctioned marriages. On October 25, 2006, the Supreme Court of New Jersey issued an opinion granting plaintiffs significant relief. The Justices unanimously held that the State Constitution "guarantees that every statutory right and benefit conferred to heterosexual couples through civil marriage must be made available to committed same-sex couples." By a 4-3 vote, however, the Court also rejected the claim that the State Constitution entitles same-sex couples to enter into state-sanctioned mar-



riages. The Court then referred the matter to the Legislature to either amend the marriage statutes to permit same-sex couples to marry, or enact an appropriate statutory structure creating a parallel relationship through which committed, same-sex couples can access all of the benefits, privileges and obligations of marriage. On December 14, 2006, both houses of the Legislature enacted a bill establishing civil unions for same-sex couples. Governor Corzine signed the bill on December 21, 2006. The legislation provides couples in civil unions with all of the rights, benefits, responsibilities and obligations of married couples. The Division continued throughout late 2006 to provide legal advice and assistance with respect to implementation of the new civil union statute.

New Jersey v. Delaware—

In this U.S. Supreme Court matter, New Jersey brought suit against the State of Delaware over interpretation of the Compact of 1905 between the states. The current issue in this longstanding dispute relates to whether New Jersey has exclusive jurisdiction under the Compact over riparian improvements along New Jersey's shore within the "12 Mile Circle" area in the Delaware River. In January, the Supreme Court referred the matter to a Special Master and, after months of discovery and expert reports, the parties filed motions for summary judgment on December 22, 2006. The Division will be arguing that the Compact gives New Jersey exclusive jurisdiction over improvements emanating from the New Jersey shoreline, and that New Jersey has been exercising that jurisdiction for many years. While a decision in the case will ultimately have broader implications, one specific dispute it is expected to resolve is the matter of whether Delaware has any review and regulatory jurisdiction over a specific project – a liquefied natural gas facility planned for development along the Delaware riverfront in Gloucester County by British Petroleum (BP).

United States v. Rabner —

This matter arose from the clandestine surveillance of telephone-calling records by the federal National Security Agency (NSA). Earlier in 2006, it was widely reported that the nation's major telecommunications carriers had systematically turned over to the NSA the telephone calling records of millions of Americans without a court order or a showing of suspicion of criminal activity. The phone records spanned a period beginning shortly after September 11, 2001. When this information became public, the Attorney General's Office served investigative subpoenas on each of the major telecommunications carriers operating in New Jersey seeking information on whether they had provided telephone calling records to the NSA and, if so, whether this activity was conducted pursuant to a court order. Prior to the return date of the subpoenas and before the Attorney General could initiate an enforcement action in state court, the United States filed suit in federal court seeking a declaration that several federal statutes, executive orders and legal precedents bar the New Jersey Attorney General from conducting an investigation and that the "state secrets doctrine" prevents telecommunications carriers from either admitting or denying any of the questions posed in the New Jersey subpoenas. The Division of Law responded with a motion arguing that the United States lacks a cause of action, that the federal court lacks jurisdiction and that the statutes, executive orders and precedents cited by the United States do not prohibit the Attorney General from conducting an investigation. The Court is currently considering that motion.



PSEG/Exelon Proposed Merger —

In 2006, the Division of Law was actively involved in legal processes relating to a proposed merger involving PSEG and Exelon that was before the Board of Public Utilities. The proposed \$17 billion merger would have formed the largest utility in the history of the United States, combining the largest gas and electric utility in New Jersey with ComEd, Chicago's electric utility, and PECO, Philadelphia's electric utility. The merged entity would also have gained concentrated ownership of electric generation plants — including nuclear power facilities — serving New Jersey. The guiding statutory standard was whether the merger would result in positive benefits in the areas of competition, service, rates and impact on employees. Due to the size of the merger, the six weeks of hearings at the Office of Administrative Law drew 30 interveners from across a wide spectrum of interests. As the case progressed, the Division also participated in the merger-related proceedings of the Federal Energy Regulatory Commission and the Antitrust Division of the United States Department of Justice, both of which approved it. When the Office of Administrative Law hearings concluded, the various parties attempted to negotiate a settlement. The proceedings ultimately reached an impasse, however, and PSEG and Exelon withdrew the merger application in September 2006.

Abbott v. Burke Litigation —

As in years past, legal issues arising under the school-funding-related Abbott v. Burke Supreme Court decision were an active area of litigation throughout 2006. Cases regarding the level of funding for so-called Abbott districts, facilities and district audits were heard by the New Jersey Supreme Court. Additionally, the Division handled numerous litigation matters brought by individual Abbott districts regarding funding and programs.

Camden Redevelopment Litigation —

The Division was involved in various litigation matters on behalf of the Economic Recovery Board for Camden, arising out of redevelopment projects undertaken in the city. Camden is currently subject to state oversight of certain funding allocation and capital improvements under the Municipal Rehabilitation and Economic Recovery Act. In one case there was a challenge to the city's ability to use the power of eminent domain, set forth in the New Jersey Fair Housing Act, to acquire certain properties for affordable housing purposes as part of its redevelopment effort. The Division filed a brief in support of the city's authority to use eminent domain, and a Superior Court judge subsequently agreed with the Division's position.